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In the Supreme Court of the United States

OCTOBER TERM, 1982

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
PETITIONER

v.

SHELL OIL COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REX E. LEE
Solicitor General
LAWRENCE G. WALLACE
Deputy Solicitor General
RICHARD G. WILKINS
Assistant to the Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

MICHAEL N. MARTINEZ
General Counsel (Acting)
PHILIP B. SKLOVER
Associate General Counsel
VELLA M. FINK
Assistant General Counsel
KENNETH J. BURCHFIEL
Attorney
Equal Employment Opportunity Commission

QUESTION PRESENTED

Whether a charge of unlawful employment discrimination filed by a Commissioner of the Equal Employment Opportunity Commission under Section 706(b) of Title VII of the Civil Rights Act of 1964 is invalid because it sets forth the asserted discriminatory practices in general terms rather than articulating the factual basis for the allegations.

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OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, 1a-9a) is reported at 676 F.2d 322. The opinion of the district court (App. B, *infra*, 15a-31a) is published at 523 F. Supp. 79.

JURISDICTION

The judgment of the court of appeals was entered on April 28, 1982 (App. C, *infra*, 32a-33a). The opinion of the court of appeals was modified and a petition for rehearing was denied on July 20, 1982 (App. A, *infra*, 10a-14a; App. D, *infra*, 34a-39a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES AND REGULATIONS INVOLVED

Section 706(b) of Title VII, Civil Rights Act of 1964, 42 U.S.C. 2000e-5(b), provides in pertinent part:

> Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer * * * has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer * * * within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission.

Section 709(a) of Title VII, 42 U.S.C. 2000e-8(a), provides:

> In connection with any investigation of a charge filed under section 2000e-5 of this title, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this title and is relevant to the charge under investigation.

Section 710 of Title VII, 42 U.S.C. 2000e-9, provides:

> For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 161 of title 29 [Section 11 of the National Labor Relations Act] shall apply.

Section 1601.12 of the Equal Employment Opportunity Commission's Procedural Regulations, 29 C.F.R. 1601.12, provides in pertinent part:

(a) Each charge should contain the following:

* * * * *

"(3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices: See § 1601.15(b);

* * * * *

(b) Notwithstanding the provisions of paragraph (a) of this section, a charge is sufficient when the Commission receives from the person making the charge a written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of. A charge may be amended to cure technical defects or omissions, including failure to verify the charge, or to clarify and amplify allegations made therein.

The Commission's Standards for Selecting Systemic Respondents (*E.E.O.C. Compl. Man. (CCH)* § 16.2 (1979)) and the Procedure for Selecting Systemic Respondents (*id.* § 16.3) are set forth in App. E, *infra*, 40a-43a.

STATEMENT

1. Title VII of the Civil Rights Act of 1964, 42 U.S.C. (& Supp. IV) 2000e *et seq.*, prohibits employment discrimination based on an individual's race, color, religion, sex or national origin. Section 703, 42 U.S.C. 2000e-2. Under the Act, charges of discrimination may be filed by or on behalf of a person aggrieved, or by a member of the Equal Employment Opportunity Commission. Section 706(b), 42 U.S.C. 2000e-5(b). Whenever a charge is filed, Section 706(b) provides that, within ten days, the Commission "shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice)" on the respondent. 42 U.S.C. 2000e-5(b). The Commission must then undertake an investigation to determine whether

reasonable cause exists to believe that the charge is true. *Ibid.* During the course of this investigation, the Commission is entitled to inspect and copy any evidence of the person or firm being investigated (Section 709(a), 42 U.S.C. 2000e-8(a)), and may issue subpoenas that can be enforced upon application to the district courts. Section 710, 42 U.S.C. 2000e-9 (incorporating Section 11 of the National Labor Relations Act, 29 U.S.C. (& Supp. IV) 161). If, at the conclusion of the investigation the Commission finds no reasonable cause, the charge is dismissed. Section 706(b), 42 U.S.C. 2000e-5(b). If, however, the Commission concludes that reasonable cause exists, it must endeavor to eliminate the alleged unlawful practice through informal methods of conference, conciliation and persuasion before resorting to a civil enforcement action brought in federal court. Section 706(b) and (f), 42 U.S.C. 2000e-5(b) and (f).[1]

Section 706(b) requires that all charges "shall be in writing under oath or affirmation, and shall contain such information and be in such form as the Commission requires" (42 U.S.C. 2000e-5(b)). The Commission's regulations provide that a charge of discrimination should contain a "clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices" (29 C.F.R. 1601.12(a)(3)), but further provide that, notwithstanding the preceding requirements, a written charge is sufficient if it identifies the parties and "describe[s] generally the action or practices complained of" (Section 1601.12(a)(5)).

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[1] Should informal conciliation efforts fail, the Commission is empowered to bring a civil action against any respondent "not a government, governmental agency, or political subdivision" (Section 706(f), 42 U.S.C. 2000e-5(f)). Cases involving governmental agencies or other political subdivisions are "refer[red] * * * to the Attorney General who may bring a civil action against such respondent" (*ibid.*).

Many charges are filed directly by aggrieved complainants. Commissioners' charges, however, are filed in two circumstances: to protect the identity of an aggrieved individual, see 29 C.F.R. 1601.7 and 1601.11, and to alleviate instances of systemic discrimination that may not be readily identifiable on the basis of individual complaints alone. See, e.g., *Graniteville Co. (Sibley Division)* v. *EEOC*, 438 F.2d 32, 38 (4th Cir. 1971). The Commission has published guidelines to aid commissioners in filing systemic discrimination charges. *E.E.O.C. Compl. Man.*, App. E, *infra*, 40a-43a. Under these systemic guidelines, commissioners' charges may be issued against respondents that meet one or more of the published standards. App. E, *infra*, 40a-41a.[2] These standards are applied to "an analysis of EEO reporting data and other available information," including individual charge files and data from other administrative agencies. *Id.* at 41a-42a. A potential systemic charge passes through successive stages of staff review before being presented to a commissioner with a memorandum detailing the preliminary data supporting issuance of a charge. *Id.* at 41a-43a. Although a charge by an aggrieved individual may provide the ba-

[2] Relevant factors under the systemic guidelines include: whether an employer "continue[s] in effect policies and practices which result in low utilization of available minorities and/or women;" whether an employer hires "a substantially smaller proportion of minorities and/or women" in its higher paid than its lower paid job categories; whether an employer maintains recruitment, hiring, assignment, promotion, discharge or other policies not justified by business necessity "that have an adverse impact on minorities and/or women;" whether an employer utilizes restrictive employment practices that "are likely to be used as models for other employers;" and whether an employer provides available minorities and women with fair access to employment if the employer has "substantial numbers of employment opportunities" (App. E, *infra*, 40a-41a).

sis of a systemic charge, see 29 C.F.R. 1610.6, commissioners' charges generally are based upon an analysis of statistical data provided by employers.

2. On September 27, 1979, Eleanor Holmes Norton, then Chair of the Commission, filed a commissioner's charge against the Shell Oil Company, alleging unlawful employment practices at Shell Oil's Wood River Refinery, Wood River, Illinois. The charge was the product of the Commission's systemic charge process, and it recited generally that Shell "has violated and continues to violate Sections 703 and 707 of the Civil Rights Act of 1964, as amended, by discriminating against Blacks and females on the basis of race and sex with respect to recruitment, hiring, selection, job assignment, training, testing, promotion, and terms and conditions of employment" (App. F, *infra*, 44a). The charge stated that such discrimination resulted specifically from Shell's unlawful exclusion of Blacks from "managerial, professional, technical, office/clerical, craft, and service workers positions" and the company's similar exclusion of women from "managerial, professional, technical, craft, operative, laborer and service worker positions." *Ibid.* The charge was subsequently amended to state that Commissioner Norton had reason to believe that Shell had engaged in the unlawful practices on a continuing basis from at least July 2, 1965, to the present. *Id.* at 47a. See *EEOC* v. *Dean Witter Co.*, 643 F.2d 1334, 1337-1338 (9th Cir. 1980).

Shell received a copy of the charge in October 1979, along with a request for information regarding its employment practices. Section 709(a), 42 U.S.C. 2000e-8(a). Shell objected to the request for information, insisting that the statistical profile of its Wood River Refinery was "clearly not the profile anticipated for a Commissioner's Charge."[3] On May 15, 1980, the

[3] Letter from R.B. Rice to W. Ed Mansfield (Mar. 7, 1980), included in Exh. G to Affidavit of W. Ed Mansfield, Civ. No. 81-5020 (S.D. Ill.).

Commission issued a subpoena duces tecum requiring Shell to produce certain employment information covering the years 1976 to the present. Shell subsequently filed this suit in federal district court in Missouri to quash the subpoena and enjoin the Commission's investigation. Shell alleged that the charge was invalid under Section 706(b) because it failed to disclose sufficient facts to form a basis for the allegations of discrimination.[4] In February 1981, the Commission filed an action in the Southern District of Illinois to enforce the subpoena. Civ. No. 81-5020 (S.D. Ill.). The enforcement action was transferred to Missouri, where the district court rejected Shell's arguments and enforced the Commission's subpoena.

The district court concluded that Shell's "allegation that the Commissioner's charge does not specify sufficient facts is * * * meritless" (App. B, *infra*, 24a). The court recognized that the "purpose of a charge under section 706, 42 U.S.C. 2000e-5, is only to initiate the EEOC investigation, not to state sufficient facts to make out a prima facie case" (*ibid.*). The court further noted that, under Commission regulations, a charge "is sufficient when the Commission receives from the person making the charge a written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of" (App. B, *infra*, 25a). 29 C.F.R. 1601.12(b). The court therefore concluded that the present charge "is sufficient, because it is a typewritten statement which identifies the parties involved as being Shell Oil Company and the EEOC,

[4] Shell presented a number of other objections to enforcement of the subpoena, contending, inter alia, that the subpoena contravened the terms of the Federal Reports Act of 1942, 44 U.S.C. 3501 *et seq.*, and the Trade Secrets Act, 18 U.S.C. 1905, as well as the Due Process Clause of the Fifth Amendment. See App. B, *infra*, 17a-25a. The district court (*ibid.*) and the court of appeals (App. A, *infra*, 9a, 13a) rejected these claims.

and it describes generally the practices complained of as failing or refusing to recruit, hire, promote, train, assign or select Blacks and/or females for managerial, professional, technical, craft, and service worker positions, inter alia, because of their race and/or sex" (App. B, *infra*, 25a).

On appeal, the Eighth Circuit reversed (App. A, *infra*, 1a-14a). The panel held that the charge failed to state "sufficient facts to comply with the date, place and circumstances requirements of section 706(b)" (App. A, *infra*, 5a). The court found that the specification of July 2, 1965, as the beginning date for Shell's alleged continuing misconduct was insufficient because "[w]e find no factual basis" to support that date (*id.* at 7a). The court further held that the circumstances of the charge must be supported by an articulated "factual basis" (*id.* at 8a). The court reasoned that "the factual basis for the charge enables the parties to determine whether conciliation is an appropriate remedy and aids the court and the employer in determining what evidence is relevant for discovery and what records must be retained in accordance with EEOC regulations" (*ibid.*)[5] Notwithstanding the provision of Section 706(b), stating that charges "shall contain such information and be in such form as the Commission requires" (42 U.S.C. 2000e-5(b)), the court concluded that "[a] sufficient Commissioner's charge should contain the following information: the type of information upon which the charge is based; the approximate dates of the al-

[5] The court stated that a charge without an underlying factual basis "fails to give the employer sufficient notice," citing *Graniteville Co. (Sibley Division)* v. *EEOC*, 438 F.2d 32, 41 (4th Cir. 1971) (App. A, *infra*, 8a). *Graniteville*, however, expressly held that a charge under Section 706 need not "state sufficient facts to make out a prima facie case," but rather need only "put the respondent on notice of the practice or violation with which it is charged" (438 F.2d at 38).

leged unlawful employment practices; the nature of the charge (e.g., failure to hire, failure to promote, dismissal); and if an individual charge has been filed, the position of the aggrieved individual (e.g., applicant, employee, former employee)" (App. A, *infra*, 12a).[6]

REASONS FOR GRANTING THE PETITION

The opinion below directly conflicts with the decisions of six other circuits that have considered the pleading requirements imposed by Section 706(b) of Title VII of the Civil Rights Act of 1964. The decision ignores the fact that a Section 706(b) charge merely initiates an administrative investigation by the Commission, and the court's insistence on detailed factual pleading seriously disrupts the "integrated, multistep enforcement procedure" embodied in Title VII. *Occidental Life Insurance Co.* v. *EEOC*, 432 U.S. 355, 359 (1977). Moreover, because the decision authorizes district courts to review administrative charges for sufficiency, it erroneously affords litigants a disruptive and dilatory means of halting administrative proceedings at their very outset. Cf. *FTC* v. *Standard Oil Co. ("Socal")*, 449 U.S. 232 (1980). The decision thus presents a significant obstacle to the processing of numerous charges currently pending before the Commission.

1. As noted by Chief Judge Lay in his dissent to the denial of rehearing en banc (App. D, *infra*, 34a-35a), the opinion of the panel below places the Eighth Circuit in direct conflict with the decisions of at least six other circuits. *Sparton Southwest, Inc.*, v. *EEOC*, 461 F.2d 1055, 1059 (10th Cir. 1971) (en banc); *EEOC* v. *Dean Witter Co.*, 643 F.2d 1334, 1337-1338 (9th Cir. 1980);

[6] On July 20, 1982, the court denied the government's motion for rehearing en banc, Chief Judge Lay dissenting. Chief Judge Lay noted that the decision placed the circuit "in direct conflict with the decisions of all other courts of appeals addressing the issue of factual allegations in a title VII charge" (App. D, *infra*, 35a).

General Employment Enterprises, Inc. v. *EEOC*, 440 F.2d 783, 784 (7th Cir. 1971); *Bowaters Southern Paper Corp.* v. *EEOC*, 428 F.2d 799, 800-801 (6th Cir.), cert. denied, 400 U.S. 942 (1970); *New Orleans Public Service, Inc.* v. *Brown*, 507 F.2d 160, 162-164 (5th Cir. 1975); *Graniteville Co. (Sibley Division)* v. *EEOC*, 438 F.2d 32, 37-39 (4th Cir. 1971). These courts have uniformly concluded that a Title VII charge need not incorporate a detailed "factual basis," as required by the court below (App. A, *infra*, 9a, 14a).

To be sure, Section 706(b) requires that an employer receive notice, within 10 days, of any charge filed with the Commission. That notice, moreover, must contain the "date, place and circumstances of the alleged unlawful employment practice" (42 U.S.C. 2000e-5(b)). But, as the Ninth Circuit recently stated, Section 706(b) "impose[s] no strict technical pleading requirement upon complainants, whether they be private parties or the Commissioners of the EEOC." *EEOC* v. *Dean Witter Co.*, *supra*, 643 F.2d at 1338. "The purpose of the charge under section 706 is only to initiate the EEOC investigation, not to state sufficient facts to make out a prima facie case. * * * [The section] only requires a sufficient allegation to give the EEOC notice of what it is to investigate and put the respondent on notice of the practice or violation with which it is charged." *Graniteville Co. (Sibley Division)* v. *EEOC*, *supra*, 438 F.2d at 38.

In accordance with these principles, the courts of appeals have uniformly upheld Section 706(b) charges against attack on sufficiency grounds. Except for the decision below, no court of appeals has set aside a commissioner's charge under Title VII for failure to specify its "factual basis" (App. A, *infra*, 9a, 14a). On the contrary, the reported decisions consistently uphold Title VII charges that are no more specific factually than the

one found deficient below.[7] Indeed, the only prior reported court of appeals opinion invalidating a charge under Section 706(b) did so not because of a failure to specify a factual basis for the charge, but rather because the charge contained no date whatsoever for the alleged unlawful practices. *EEOC* v. *Dean Witter Co.*, *supra*, 643 F.2d at 1337-1338. The court, however, emphasized that Section 706(b) places "no strict technical pleading requirement" upon the Commission, and specifically noted that "a good faith estimate of the probable time periods" involved in a charge would be sufficient to meet the "date" requirement of the statute. 643 F.2d at 1338. Moreover, the court stressed that a "listing of the nature of the alleged employment practices, even though essentially conclusory in nature, [is] suffi-

[7] See, e.g., *Sparton Southwest, Inc.* v. *EEOC*, *supra*, 461 F.2d at 1058 (charge alleges that "[r]espondent discriminatorily fails and/or refuses to recruit and/or hire Negroes, Indians and Spanish-Surnamed Americans in the same manner it recruits and/or hires Anglos"); *General Employment Enterprises, Inc.* v. *EEOC*, *supra*, 440 F.2d at 783 (commissioner's charge alleges that employer violates Title VII by "discriminatorily failing or refusing to hire Negroes and Jewish people"); *Bowaters Southern Paper Corp.* v. *EEOC*, *supra*, 428 F.2d at 800 (commissioner's charge alleges that employer "has engaged in the following unlawful employment practices: 1. Maintenance of racially restricted job classifications. 2. Discriminatory use of tests, restricting Negro employees to lower paying jobs. 3. Denial to Negro employees of opportunity to participate in apprenticeship and on-the-job training programs"); *New Orleans Public Service, Inc.* v. *Brown*, *supra*, 507 F.2d at 163-164 (charge quotes statistics to support allegation that "[r]espondent employer discriminatorily refuses or fails to recruit and hire Negroes, Spanish Surnamed Americans, Jews and females in the same manner it recruits and hires Caucasions," but court explicitly notes that charge would be sufficient "even without the statistical information which this charge contains"); *Graniteville Co. (Sibley Division)* v. *EEOC*, *supra*, 438 F.2d at 34 n.1 (charge alleges that "Negroes are hired to the traditional Negro jobs and regardless of length of service, Negroes are not promoted or considered for better jobs as are the white employees").

cient to comply with the 'circumstances' requirement" of Section 706(b). 643 F.2d at 1337. Significantly, the charge in *Dean Witter*, like the charge in this case, set forth the alleged unlawful practices in general terms without any supporting "factual basis."[8]

The court below did not attempt to distinguish the cases, noted above, that support the sufficiency of the present charge. Rather, the court, in simple disagreement with the previously unanimous conclusion to the contrary, imposed a detailed factual pleading requirement upon the Commission. Its sole basis for doing so is the proviso in Section 706(b) that an employer be notified of the "date, place and circumstances" of any conduct allegedly in violation of Title VII. 42 U.S.C. 2000e-5(b).

The court noted that the "place" requirement of Section 706(b) was not in dispute—the charge clearly identified the Wood River Refinery as the site of the alleged discrimination (App. A, *infra*, 7a n.4). The court,

[8] The charge in *Dean Witter* alleged that the employer had discriminated against Blacks, women, Spanish-surnamed Americans and other minorities on the basis of race, sex, and national origin by policies that included but were not limited to (643 F.2d at 1336 n.1):

> 1. Refusing to recruit and hire Blacks, women, Spanish-surnamed Americans and other minorities in the same manner and on the same basis in which white males have been recruited and hired;
>
> 2. Discriminatorily assigning and limiting Blacks, women, Spanish-surnamed Americans and other minorities to positions with lower pay and less opportunity for advancement than those to which white males have been assigned;
>
> 3. Refusing to provide training and promotion opportunities for Blacks, women, Spanish-surnamed Americans and other minorities in the same manner in which such opportunities have been provided white males;
>
> 4. Discriminatorily subjecting Blacks, women, Spanish-surnamed Americans and other minorities to different terms and conditions of employment, including leave, benefits, and standards for disciplinary actions and terminations, than those which are applied in the case of white males.

however, held that the "date" requirement was not met. Specification of July 2, 1965, as the beginning date for Shell's alleged continuing violations was insufficient, the court concluded, because that date lacked a "factual basis" (*id.* at 7a). The court ignored the fact that "[t]he filing of a charge is the first step in the EEOC administrative process, and understandably, the EEOC may be uncertain about the temporal scope of the challenged practices, especially where a pattern or practice charge is involved." *EEOC* v. *Dean Witter Co.*, *supra*, 643 F.2d at 1338. The charge in this case alleges systemic discriminatory practices of a continuing nature, and, prior to administrative investigation, the Commission has no way of knowing exactly when such practices began. It therefore is not unreasonable for a commissioner to select July 2, 1965—the first day that Title VII made the complained of practices illegal—as the beginning date for Shell's alleged misconduct. The court below erred in holding that this "good faith estimate of the probable time periods" involved did not meet the requirements of Section 706(b). *EEOC* v. *Dean Witter Co.*, *supra*, 643 F.2d at 1338.

The court similarly erred in concluding that the charge's specification of Shell's alleged unlawful conduct is insufficient to meet the "circumstances" requirement of Section 706(b). The charge notified Shell that a commissioner of the EEOC had reason to believe that the company had excluded Blacks from "managerial, professional, technical, office/clerical, craft, and service workers positions," and had confined women to office and clerical positions (App. F, *infra*, 44a). Thus, the charge clearly informed Shell of the substance of the allegations against it. Unless the Commission must present its proof along with its charge, it is difficult to see how additional "facts" would materially aid Shell at the outset of this proceeding. Indeed, as the Sixth Circuit has noted, "it is difficult to see what additional informa-

tion the Commissioner should set forth as facts supporting [her] charge." *Bowaters Southern Paper Corp.* v. *EEOC*, *supra*, 428 F.2d at 800.[9]

2. The decision below disregards the primary function of a Section 706(b) charge. As this Court noted in *Occidental Life Insurance Co.* v. *EEOC*, 432 U.S. 355, 359 (1977), Title VII "establish[es] an integrated, multistep enforcement procedure culminating in the EEOC's authority to bring a civil action in a federal court." The initial charge under Section 706(b) does not commence a formal civil enforcement action against a respondent, but rather is merely the first step in an integrated procedure that emphasizes informal conciliation. The pleading requirement imposed by the court below seriously disrupts this statutory scheme.

The primary purpose of a Section 706(b) charge is to initiate an administrative investigation to determine whether there is reasonable cause to believe that an employer has violated Title VII. Formal judicial enforcement actions are commenced only after a finding of reasonable cause and failure of voluntary conciliation efforts. 42 U.S.C. 2000e-5(b). The lower court's imposition of a strict, factual pleading requirement upon the Commission at the very outset of a Title VII proceeding, however, interrupts the orderly flow of this carefully designed process. Indeed, it interposes an obstacle that could be fatal to many otherwise meritorious Title VII proceedings.

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[9] The court below, moreover, was not particularly helpful in delineating what additional "facts" the Commission should supply on remand. The court merely noted that a "sufficient" charge should contain "the nature of the charge (e.g., failure to hire, failure to promote, dismissal)" (App. A, *infra*, 8a, 12a). The charge, however, already sets forth the "nature" of its allegations in the most straightforward terms: Shell allegedly failed to "recruit, hire, promote, train, assign or select Blacks for managerial, professional, technical, office/clerical, craft, and service workers positions because of their race." App. F, *infra*, 44a.

The court's "factual basis" requirement, as noted by Chief Judge Lay, "require[s] the Commission to show extrinsic evidence of reasonable cause in order to conduct an investigation to determine reasonable cause" (App. D, *infra*, 38a). The decision, in effect, "place[s] the cart before the horse" (*id.* at 37a) and means "that the Commission, in its investigation, must not ask any questions to which it does not already know the answers." *Local 104, Sheet Metal Workers* v. *EEOC*, 439 F.2d 237, 241 (9th Cir. 1971). Such a result, the Ninth Circuit has properly noted, "has about it the aura of another, and bygone, legal era" (*ibid.*).

"Since a Commissioner's charge does no more than initiate administrative fact finding and voluntary conciliation," there is no sound reason to require detailed factual pleading under Section 706(b). *General Employment Enterprises, Inc.* v. *EEOC*, *supra*, 440 F.2d at 784. Although Section 706(b) charges are a condition precedent to agency action under Title VII, they, like their counterpart charges under the National Labor Relations Act, do not limit the scope of any subsequent findings of reasonable cause by the Commission, nor do they define the limits of a resulting Commission enforcement action. Their "purpose is merely to set in motion the machinery of an inquiry." *NLRB* v. *Fant Milling Co.*, 360 U.S. 301, 307 (1959). "Any violations that the EEOC ascertains in the course of a reasonable investigation of the charging party's complaint are actionable." *General Telephone Co.* v. *EEOC*, 446 U.S. 318, 331 (1980).

The National Labor Relations Act served as the remedial model for Title VII. *International Brotherhood of Teamsters* v. *United States*, 431 U.S. 324, 366 (1977). Precisely because a charge simply initiates administrative inquiry, generally worded charges of unlawful employment practices under the National Labor Relations Act have consistently been recognized as suf-

ficient. *NLRB* v. *Fant Milling Co.*, *supra*, 360 U.S. at 307. See generally *Gulf States Manufacturers, Inc.* v. *NLRB*, 579 F.2d 1298 (5th Cir. 1978).[10] By parity of reasoning, generally worded charges under Section 706(b) of Title VII should likewise be deemed sufficient. "This is consistent with the broad remedial purposes of the Act which could only be thwarted by sustaining technical defenses of alleged violators." *General Employment Enterprises, Inc.* v. *EEOC*, *supra*, 440 F.2d at 784.

3. The decision below not only disrupts the orderly flow of administrative proceedings under Title VII, it ignores the clear wording of Section 706(b) as well. Section 706(b) expressly provides that "charges * * * shall contain such information and be in such form as the Commission requires." 42 U.S.C. 2000e-5(b). The Commission, therefore, not the federal judiciary, has the primary responsibility of determining whether a charge under Section 706(b) is sufficient.[11]

[10] The NLRA has often guided courts in construing the Civil Rights Act of 1964. *Zipes* v. *Trans World Airlines Inc.*, No. 78-1545 (Feb. 24, 1982), slip op. 8 n.11; *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792, 803-804 (1973); *Franks* v. *Bowman Transportation Co.*, 424 U.S. 747, 768-769 (1976).

[11] The first sentence of Section 706(b) requires that the Commission "serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice)" on a respondent within 10 days. The court below stated that whether the "date, place and circumstances" provision applies to the notice requirement or to the charge itself "is not entirely clear" (App. A, *infra*, 6a n.3). The court, however, without stating why it resolved any supposed ambiguity the way it did, applied the "date, place and circumstances" provision to the charge (*id.* at 8a, 12a). The court erred in imposing such requirements on a Section 706(b) charge. Even assuming, arguendo, that the first sentence of Section 706(b) is ambiguous as to whether the date, place and circumstances of any alleged misconduct must be in the notice of a charge or the charge itself, the second sentence of the statute clarifies that ambiguity. That sentence clearly provides that charges "shall contain such information and be in such form as the Commission requires" (42 U.S.C. 2000e-5(b)).

The Commission has consistently held that a charge that generally describes the practices complained of is sufficient under Title VII. See Equal Employment Opportunity Commission Procedural Regulations, 29 C.F.R. 1601.11(b), 31 Fed. Reg. 10269 (1966). Current Commission regulations state that a charge shall contain a "clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices." 29 C.F.R. 1601.12(a)(3). Notwithstanding those requirements, however, "a charge is sufficient when the Commission receives from the person making the charge a written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of." Section 1601.12(b).

The longstanding interpretation of a federal agency charged with the administration of its founding statute is entitled to great respect. *EEOC* v. *Associated Dry Goods Corp.*, 449 U.S. 590, 600 n.17 (1981). The deference accorded an agency's interpretation is particularly great when that interpretation has remained consistent over a long period of time. *Ibid.* See, e.g., 31 Fed. Reg. 10269 (1966). The district court properly applied the Commission's regulations and concluded that the commissioner's charge in this case was sufficient inasmuch as it identified the parties involved as Shell Oil Company and the Commission and described generally the practices complained of as "failing or refusing to recruit, hire, promote, train, assign or select Blacks and/or females for managerial, professional, technical, craft, and service worker positions, inter alia, because of their race and/or sex" (App. B, *infra*, 25a).

The court of appeals, unlike the district court, erroneously disregarded the Commission's longstanding determination that a charge is sufficient if it generally sets forth the nature of the practices complained of and specifies the parties involved. "[T]he EEOC does not

function simply as a vehicle for conducting litigation on behalf of private parties; it is a federal administrative agency charged with the responsibility of investigating claims of employment discrimination and settling disputes, if possible, in an informal, noncoercive fashion." *Occidental Life Insurance Co.* v. *EEOC*, *supra*, 432 U.S. at 368. To paraphrase this Court's opinion in *Occidental Life*, "In view of the federal policy requiring employment discrimination claims to be investigated by the [Commission] and, whenever possible, administratively resolved before suit is brought in federal court, it is hardly appropriate [to shift the determination of whether an initial charging document is sufficient from the Commission to the federal courts]." *Ibid.* The court below detailed what "[a] sufficient Commissioner's charge should contain" (App. A, *infra*, 8a, 12a). Section 706(b), however, unambiguously assigns that duty to the Commission. 42 U.S.C. 2000e-5(b).

4. The decision below imposes pleading requirements on the Commission that have been specifically rejected by Congress. In 1972, Congress enacted extensive changes to Title VII, designed in part to increase the investigative and enforcement powers of the Commission. See generally *Occidental Life Insurance Co.* v. *EEOC*, *supra*, 432 U.S. at 358-373. At the time of those amendments, four circuits had concluded that Section 706(b) charges need only describe the alleged discriminatory conduct in general terms. *Local 104, Sheet Metal Workers* v. *EEOC*, *supra*, 439 F.2d at 241-243; *Bowaters Southern Paper Corp.* v. *EEOC*, *supra*, 428 F.2d at 800; *General Employment Enterprises, Inc.*, *supra*, 440 F.2d at 784; *Graniteville Co. (Sibley Division)* v. *EEOC*, *supra*, 438 F.2d at 37-39. Apparently because it was aware of the import of these decisions, Congress considered requiring that a commissioner's charge set forth "the facts upon which it is based and the person or persons aggrieved" (H.R.

1746, 92d Cong., 1st Sess. § 3(a) (1971)). That requirement, however, was rejected in favor of the present version of Section 706(b), which calls for a respondent to be given notice of any charge, whether filed by a commissioner or a private party, within ten days.[12] Thus, Congress expressly rejected any requirement that a commissioner's charge under Section 706(b) set forth its underlying factual basis.[13] The lower court's imposition of such a requirement flies squarely in the face of this legislative history.[14]

[12] The 1972 amendments also eliminated the requirement of former Section 706(a) that a commissioner's charge be supported by "reasonable cause to believe a violation of this title has occurred." Act of July 2, 1964, Pub. L. No. 88-352, 78 Stat. 259 (previously codified at 42 U.S.C. (1970 ed.) 2000e-5(a)). Section 706(b) currently establishes the same standard for commissioner's charges as for those of private charging parties, viz., that "[c]harges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires" (42 U.S.C. 2000e-5(b)).

[13] Congress' undoubted awareness of the preamendment decisions that had rejected the interpretation of Section 706 adopted by the court below underscores Congress' failure to impose a factual pleading requirement upon Section 706(b). See, e.g., *Local 104, Sheet Metal Workers* v. *EEOC*, *supra*, 439 F.2d at 241-243. Congress' failure to act in the light of these decisions, while making other changes to the Act, indicates congressional approval. *EEOC* v. *Associated Dry Goods Corp.*, *supra*, 449 U.S. at 600; *Albermarle Paper Co.* v. *Moody*, 422 U.S. 405, 414 n.8 (1975); *Lorillard* v. *Pons*, 434 U.S. 575, 580-581 (1978).

[14] The lower court's factual pleading requirements are derived from the notice provision of Section 706(b). Congress was concerned in 1972 that employers be given prompt notice of pending charges. See *Occidental Life Insurance Co.* v. *EEOC*, *supra*, 432 U.S. at 371. That concern, however, was fully met by the commissioner's charge here, which clearly indicated to Shell the parties involved, the location of the alleged discriminatory activities, and generally alleged that Shell had confined its women employees in office and clerical positions and its black employees in operative and laborer positions from at least the effective date of Title VII. Such allegations would certainly be sufficient to provide notice in a complaint brought by the Commission in federal court after a finding of reasonable cause. It would be highly anomalous to require

5. The decision in this case will unavoidably result in a spate of litigation challenging the sufficiency of commissioners' charges under Title VII. Litigants in the Eighth Circuit will undoubtedly challenge the Commission to demonstrate the "facts" supporting a proposed investigation of their employment practices. Litigants will request, and courts may sometimes order, depositions of commissioners and other Commission staff members to inquire into the "factual basis" of pending discrimination charges. See, *e.g.*, *EEOC* v. *K-Mart Corp.*, 526 F. Supp. 121 (E.D. Mich. 1981), appeal pending, No. 81-1722 (6th Cir. filed Nov. 17, 1981). The end result will be that the investigator will become the investigated, and the orderly processing of discrimination claims under Title VII will grind to a halt.[15]

This result cannot be tolerated. The Court's recent decision in *FTC* v. *Standard Oil Co.*, 449 U.S. 232 (1980), requires reversal of the decision below. The court of appeals has stymied an administrative investigation of Shell Oil because of the purported insufficiency of an administrative charge. That result is clearly contrary to the Court's emphatic holding in *Socal* that federal courts may not intrude upon an administrative proceeding at its very outset.

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the Commission to plead evidence supporting its allegations at the threshold of its administrative investigation. There is no reason to impose on Section 706(b) charges "a standard even more strict than that required by our Rules of Civil Procedure, notwithstanding that the pleadings are even less significant in the administrative process than in the judicial." *Sparton Southwest, Inc.* v. *EEOC*, *supra*, 461 F.2d at 1059.

[15] The decision below will affect well over 100 pending commissioners' charges. The great majority of these charges, moreover, have been filed by commissioners who have served their terms and left the government. The legal and administrative difficulties created by the court of appeals' decision are therefore compounded by the fact that it is unclear whether a sitting commissioner can amend a charge to state what factual basis a former commissioner might have considered when issuing the charge.

In *Socal*, the Court held that the issuance of an administrative complaint by the Federal Trade Commission does not constitute final agency action reviewable under 5 U.S.C. 704. The Court reasoned that the issuance of an administrative complaint was not reviewable because, like the Section 706(b) charge here, a complaint merely represents "a threshold determination that further inquiry is warranted" (449 U.S. at 241). As demonstrated by the facts of this case, review at the charging stage of an administrative proceeding results in "interference with the proper functioning of the agency and a burden for the courts" (*id.* at 242). The Court further reasoned that judicial intervention "denies the agency an opportunity to correct its own mistakes" and results in inefficient and perhaps unnecessary piecemeal review (*ibid.*).

While the above concerns are by themselves sufficient to preclude judicial intervention at the pleading stage of administrative proceedings, there is a more fundamental concern behind the Court's rejection in *Socal* of the position successfully advanced by Shell Oil below. Arguments going to the sufficiency of an agency's pleadings are hardly unique. "[E]very respondent to a Commission complaint could make the claim that [Shell] ha[s] made. Judicial review of the averments in the Commission's complaints should not be a means of turning prosecutor into defendant before adjudication concludes" (*Socal*, *supra*, 449 U.S. at 242-243).

The pragmatic considerations justifying the conclusion of the Court in *Socal* are amply illustrated by the course of events in this case. By pursuing its claim that the Commission has issued an insufficient charge against it, Shell has been able to thwart the commencement of an administrative investigation of its employment practices for more than three years. The decision below, moreover, supplies every respondent to a commissioner's charge in the Eighth Circuit with immedi-

ate access to judicial review on the ground that the Commission has not provided a sufficient "factual basis" for the charge. If the Commission is required to defend such actions in federal court as a matter of course, as well as submit to depositions, interrogatories and other discovery aimed at probing the Commission's internal processes (see *EEOC* v. *K-Mart*, *supra*), the "integrated, multistep enforcement procedure" (*Occidental Life Insurance Co.* v. *EEOC*, *supra*, 432 U.S. at 359) designed by Congress in Title VII will simply break down. The decision below erroneously and all too readily "enable[s] those subject to administrative authority unduly to delay investigations into their affairs." B. Schwartz, *Administrative Law* § 45, at 115 (1976).

Title VII of the Civil Rights Act of 1964 does not impose strict, technical pleading requirements upon complainants, whether they be private parties or the commissioners of the EEOC. A charge under Section 706(b) "is merely the first step in the administrative process, and it would defeat the Congressional scheme to impose detailed fact pleading burdens on the EEOC before it has had an opportunity to investigate the basis for the charge." *EEOC* v. *Dean Witter Co.*, *supra*, 643 F.2d at 1338.

CONCLUSION

The petition for a writ of certiorari should be granted. Because the error of the court of appeals is manifest in light of the pertinent opinions of other courts of appeals, the statutory language and history, and this Court's opinion in *Socal*, the Court may wish to consider summary reversal.

Respectfully submitted.

REX E. LEE
Solicitor General
LAWRENCE G. WALLACE
Deputy Solicitor General
RICHARD G. WILKINS
Assistant to the Solicitor General
MICHAEL N. MARTINEZ
General Counsel (Acting)
PHILIP B. SKLOVER
Associate General Counsel
VELLA M. FINK
Assistant General Counsel
KENNETH J. BURCHFIEL
Attorney
Equal Employment Opportunity Commission

NOVEMBER 1982

APPENDIX A

SHELL OIL COMPANY, APPELLANT,

v.

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; ELEANOR HOLMES NORTON, UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; LEROY CLARK, GENERAL COUNSEL, UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; W. ED MANSFIELD, DISTRICT DIRECTOR, ST. LOUIS DISTRICT OFFICE, UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, APPELLEES.

No. 81-1811.

United States Court of Appeals,
Eighth Circuit.

Submitted March 11, 1982

Decided April 28, 1982.

Michael J. Connolly, Gen. Counsel, Philip B. Sklover, Acting Associate Gen. Counsel, Vella M. Fink, Asst. Gen. Counsel, Lorraine C. Davis, Equal Employment Opportunity Commission, Washington, D.C., for appellees.

W. Stanley Walch, Charles A. Newman, Thompson & Mitchell, St. Louis, Mo., Martin D. Schneiderman, Samuel T. Perkins, Mark B. Goodwin, Rebecca Hudsmith, Steptoe & Johson, Washington, D.C., for appellant Shell Oil Co.; Steven J. Killworth, Shell Oil Co., Houston, Tex., of counsel.

Before ROSS, Circuit Judge, FLOYD R. GIBSON, Senior Circuit Judge, and McMILLIAN, Circuit Judge.

ROSS, Circuit Judge.

Shell Oil Company (Shell) appeals from the district court's[1] order of September 22, 1981, 523 F.Supp. 79, dismissing Shell's request for injunctive relief and enforcing the Equal Employment Opportunity Commission's (EEOC or Commission) subpoena. Shell contends the Commissioner's charge was insufficient to support the subpoena and failed to give proper notice as required by Section 706(b) of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e–5(b). We agree that the charge failed to meet the requirements of Title VII.

Facts

On September 27, 1979, Eleanor Holmes Norton, then Chair of the EEOC, filed a Commissioner's charge against Shell Pursuant to Sections 706 and 707 of Title VII of the Civil Rights Act of 1964, as amended. The charge, in its entirety, stated as follows:

COMMISSIONER'S CHARGE

Pursuant to the provisions of Sections 706 and 707 of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq. (supp v. 1975) I charge the following employer with unlawful employment practices:

Shell Oil Company
Wood River Refinery
P.O. Box 262
Wood River, Illinois 62095

I believe that the above employer is within the jurisdiction of the Equal Employment Opportunity Commission and has violated and continues to violate Sections 703 and 707 of the Civil Rights Act of 1964, as amended, by discriminating against Blacks and females on the basis of race and sex with respect to recruitment, hiring, se-

[1] The Honorable Clyde S. Cahill, Jr., United States District Judge for the Eastern District of Missouri.

lection, job assignment, training, testing, promotion, and terms and conditions of employment.

More specifically, the employer's unlawful discriminatory practices include, but are not limited to:

1. Failing or refusing to recruit, hire, promote, train, assign or select Blacks for managerial, professional, technical, office/clerical, craft, and service workers positions because of their race.

2. Failing or refusing to recruit, hire, promote, train, select, and assign females to managerial, professional, technical, craft, operative, laborer and service worker positions because of their sex.

The persons aggrieved include all Blacks and women who are, have been or might be affected by the unlawful employment practices complained of herein. Ms. Norton verified, under oath, that she had cause to believe that Shell committed the unlawful employment practices alleged in the charge. On Janury 16, 1981, the Commissioner's charge was amended to state that Ms. Norton had reason to believe Shell engaged in the unlawful practices on a continuing basis at least from July 2, 1965, to present.

In October 1979, Shell received notice of the charge, a copy of the charge, and a Request for Information which sought details of Shell's employment practices. Shell objected to the Request based on Shell's belief that the underlying charge was insufficient. On May 15, 1980, the Commission issued a subpoena requiring Shell to produce certain evidence described in the Request for Information covering the period from 1976 to the present.[2] Shell petitioned the Commission to revoke or

[2] The subpoena directed Shell to produce, *inter alia*, lists of: employees including their sex, race, date of hire, position and salary; applicants for hire identified by race and sex; persons who sought promotion or transfers identified by race and sex, indicating the reason for selection or non-selection; vacancies filled, indicating minimum qualifications required and identity by race and sex of persons selected; employment tests administered indicating

modify the subpoena. The EEOC rejected Shell's petition and directed Shell to comply with the subpoena.

Shell filed suit in federal district court in Missouri on September 18, 1980, seeking to quash the subpoena and enjoin the Commission's investigation. Shell maintained that: (1) the charge was invalid for failure to specify facts sufficient to form a basis for the allegations of discrimination; (2) the subpoena was unduly burdensome; (3) the subpoena did not meet the requirements of the Federal Reports Act, 44 U.S.C. § 3501 *et seq.*; (4) the Commission was not authorized to obtain information regarding Shell's computer capability or to require Shell to compile information; and (5) disclosure of information by EEOC to outside consultants would violate Sections 706 and 709(e) of Title VII, 42 U.S.C. §§ 2000e-5 and 2000e-8(e). Shell sought limited discovery of documents pertaining to the Commissioner's charge.

On December 2, 1980, the Commission filed a motion to dismiss Shell's action on the grounds that the district court lacked jurisdiction to review the Commission's decision to investigate and that Shell's complaint failed to state a claim. The district court on March 6, 1981, denied the motion to dismiss.

On February 4, 1981, the Commission filed an action in federal district court in Illinois to enforce the subpoena. On Shell's motion, the enforcement action was transferred to Missouri and consolidated with Shell's action to quash the subpoena.

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the sex, race and score of each person taking such test and employment action taken as a result; training programs used, positions for which they were used, and sex and race of participants; enumerated employment criteria used by Shell such as arrest records, credit checks, previous salary, height or weight. The subpoena also requested information regarding the existence of personnel data on computer file.

After a show cause hearing, the district court concluded that Shell's claims were without merit and dismissed the action. The court held that the Commissioner had authority to issue the charge and that the charge met all the requirements of section 706 of Title VII. The district court rejected Shell's other contentions and held that the subpoena should be enforced with the limitation imposed that the Commission could not disclose the information obtained to outside consultants.

Shell filed its notice of appeal on October 9, 1981, and the district court on November 9, 1981, stayed its order pending resolution of the appeal.

Discussion

The primary issue on appeal is whether the Commissioner's charge states sufficient facts to comply with the date, place and circumstances requirements of section 706(b). We hold that the requirements were not met. We remand this case to the district court to give the EEOC an opportunity to amend the charge to comply with the requirements of section 706(b).

Shell contends the Commissioner's charge did not meet the requirements of Section 706(b) of Title VII, 42 U.S.C. § 2000e-5(b) because the Commissioner failed to articulate a specific basis for the allegations of discrimination and failed to provide adequate notice of the charge. Section 706(b) states in relevant part:

> (b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, * * * has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, * * * within ten days, and shall make an investigation thereof. Charges shall be in

writing under oath or affirmation and shall contain such information and be in such form as the Commission requires.

42 U.S.C. § 2000e–5(b).

Shell argues that the charge was insufficient to support the Commission's investigation because it did not specify the date or circumstances of the alleged discriminatory practices. The amended charge stated that the date of the unlawful practices was July 2, 1965, the date Title VII first became effective. The July 2 date, Shell contends, is not a good faith statement of the date of the alleged unlawful practices. Additionally, Shell argues that the charge merely lists a broad range of unlawful employment practices without stating specific circumstances to provide a basis for believing that Shell violated Title VII.

The Commission argues that Title VII does not require the EEOC to articulate a specific basis for the charge because the oath requirement contained in section 706(b) sufficiently protects employers from unfounded charges and obviates any need for a detailed statement of the facts underlying the charge. The Commission also argues that the charge met the date, place and circumstances requirements of section 706(b) in all respects.

Section 706(b) requires that the EEOC serve notice of the charge upon the charged party including "date, place and circumstances of the alleged unlawful employment practice."[3] 42 U.S.C. § 2000e-5(b). EEOC procedural regulations require each charge to contain a "statement of the facts, including pertinent dates,

[3] Whether such notice should be in the charge itself or in the notice of the charge is not entirely clear from the language of section 706(b). The better practice would be to include the date, place and circumstances in the charge itself. However, "the EEOC should be able to 'cure' any defects in the charge in its notice of the charge." *EEOC v. Dean Witter Co.*, 643 F.2d 1334, 1337 n.2 (9th Cir. 1980).

constituting the alleged unlawful employment practices." 29 C.F.R. § 1601.12(a)(3) (1981). We find that the notice and charge were deficient because they did not adequately set out the date and circumstances of the unlawful practices.[4]

The Ninth Circuit held in *EEOC v. Dean Witter Co.*, 643 F.2d 1334, 1337-38 (9th Cir. 1980) that an EEOC charge, substantially similar to the charge issued here against Shell, did not meet the date requirement because it alleged only that the practices were "continuing." The court in *Dean Witter* stated that use of the term "continuing" may inform the employer "that the practices are continuing in the present but does not disclose whether the practices have occurred in the past, or at least, when they began in the past." *Id.* at 1338. We agree that notice should at least inform the employer of the beginning dates of the unlawful practices and include enough other information to more fully identify the individual complaint that has been used as the basis for the subpoena.

The EEOC's use of July 2, 1965, as the beginning date of Shell's Title VII violation does not meet this requirement. The purpose of disclosure of a beginning date is to protect the employer from an open-ended investigation by limiting discovery to matters relevant to the charge. *Id.* at 1338. Use of the effective date of Title VII does not give notice to the employer of the parameters of the investigation. We read section 706(b) to require "some basis in fact for the date alleged in the charge." *EEOC v. K-Mart Corp.*, 526 F.Supp. 121, 125 (E.D. Mich.1981). We find no factual basis in the EEOC's allegation of July 2, 1965, as the beginning date of the alleged Title VII violations.

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[4] The parties do not dispute the fact that a statement of the name and address of the plant at which the alleged practices occurred meets the place requirement of section 706(b).

In addition to requiring a charge to contain the date of the alleged unlawful practices, section 706(b) requires a statement of the circumstances of the alleged unlawful practices. As with the date requirement, we read this to require the statement of circumstances to be supported by some factual basis. Adequate notice of the factual basis for the charge enables the parties to determine whether conciliation is an appropriate remedy and aids the court and the employer in determining what evidence is relevant for discovery and what records must be retained in accordance with EEOC regulations. 29 C.F.R. § 1602.14(a) (1981). A charge which simply alleges discrimination in all areas of employment practice without some factual basis gives the appearance of a "fishing expedition" and fails to give the employer sufficient notice. *Graniteville Co. (Sibley Div.) v. EEOC*, 438 F.2d 32, 41 (4th Cir. 1971).

A sufficient Commissioner's charge should contain the following information: the date on which a charge was filed with the Commission by an aggrieved individual; the date of the alleged unlawful employment practice; the nature of the charge (*e.g.*, failure to hire, failure to promote, dismissal); and the position of the aggrieved individual (*e.g.*, applicant, employee, former employee). We recognize that the purpose of a Commissioner's charge is to initiate an investigation where an individual is unwilling to file the charge for fear of retaliation by the employer. *Graniteville Co. (Sibley Div.) v. EEOC*, *supra*, at 39 n.6; 110 Cong.Rec. 14186-92 (1964), *reprinted in* EEOC, Legislative History of Titles VII and XI of the Civil Rights Act of 1964, 3301-12 (1978); *EEOC v. Dean Witter Co.*, *supra*, 643 F.2d at 1339. Therefore, we do not require the Commission to divulge information in the charge which might tend to reveal the identity of an individual who wishes to remain anonymous. But to the extent

possible, the Commission should include in the charge the factual basis for the Commissioner's belief that a Title VII violation has occurred.[5]

Additional Issues

Shell further argues on appeal that: (1) enforcement of the EEOC's subpoena would effect an illegal search and seizure because the subpoena is unduly burdensome; (2) the EEOC's investigation is in violation of the Federal Reports Act because the Commission failed to use a properly authorized questionnaire form; and (3) the EEOC lacks authority to obtain information concerning Shell's computer capabilities and information which must be compiled by computer. We find that the district court adequately disposed of these issues in its memoranda and we do not disturb that court's ruling.

Conclusion

We hold that the Commissioner's charge was deficient for failure to include a factual basis for the Commissioner's belief that Shell engaged in unlawful employment practices. We remand to the district court for proceedings consistent with our holding including amendment of the Commissioner's charge to comply with the requirements set out in this opinion.

[5] We do not doubt that the Chair of the Commission may have some basis for her statement that she believes the employer has violated Sections 703 and 707 of the Civil Rights Act of 1964. However, we believe the law requires additional factual material to comply with section 706(b) and 29 C.F.R. § 1602.14(a) (1981).

UNITED STATE COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
September Term, 1981

No. 81-1811

SHELL OIL COMPANY, ET AL APPELLANTS,

v.

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ET AL, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI.

On the Court's own motion it is now here ordered that the opinion of this Court filed on April 28, 1982 be, and it is hereby, modified with the substitution of pages 7, 8, and 9, attached hereto.

July 20, 1982

Order entered at the direction of the Court.
Clerk, U.S. Court of Appeals, 8th Circuit.

The Ninth Circuit held in *EEOC v. Dean Witter Co.*, 643 F.2d 1334, 1337-38 (9th Cir. 1980) that an EEOC charge, substantially similar to the charge issued here against Shell, did not meet the date requirement because it alleged only that the practices were "continuing." The court in *Dean Witter* stated that use of the term "continuing" may inform the employer "that the practices are continuing in the present but does not disclose whether the practices have occurred in the past, or at least, when they began in the past." *Id.* at 1338. We agree that notice should at least inform the employer of the approximate dates of the unlawful practices and include enough other information to more fully identify the information that has been used as the basis for the subpoena.[5]

The EEOC's use of July 2, 1965, as the beginning date of Shell's Title VII violation does not meet this requirement. The purpose of disclosure of an approximate beginning date is to protect the employer from an open-ended investigation by limiting discovery to matters relevant to the charge. *Id.* at 1338. Use of the effective date of Title VII does not give notice to the employer of the parameters of the investigation. We read section 706(b) to require "some basis in fact for the date alleged in the charge." *EEOC v. K-Mart Corp.*, 526 F.Supp.

[5] In its petition for rehearing en banc the Commission stresses that although Commissioner's charges are often based on individual complaints, many charges are founded on statistical data gathered by the Commissioner from annual reports filed with the EEOC and the Department of Labor's Office of Federal Contract Compliance Programs. The Commissioner for the first time reveals that the present charge was based on such statistical information.

We do not read 42 U.S.C. § 2000e–5 as prohibiting the filing of a Commissioner's charge which is based on statistical data obtained by the Commissioner from annual reports. We do hold, however, that the basic information that the charge is based on statistical data and the general nature of that da[illegible] including dates, should be disclosed in the charge.

121, 125 (E.D. Mich. 1981). We find no factual basis in the EEOC's allegation of July 2, 1965, as the beginning date of the alleged Title VII violations.

In addition to requiring a charge to contain the date of the alleged unlawful practices, section 706(b) requires a statement of the circumstances of the alleged unlawful practices. As with the date requirement, we read this to require the statement of circumstances to be supported by some factual or statistical basis. Adequate notice of the factual basis for the charge enables the parties to determine whether conciliation is an appropriate remedy and aids the court and the employer in determining what evidence is relevant for discovery and what records must be retained in accordance with EEOC regulations. 29 C.F.R. § 1602.14(a) (1981). A charge which simply alleges discrimination in all areas of employment practice without some factual or statistical basis gives the appearance of a "fishing expedition" and fails to give the employer sufficient notice. *Graniteville Co. (Sibley Div.) v. EEOC*, 438 F.2d 32, 41 (4th Cir. 1971).

A sufficient Commissioner's charge should contain the following information: the type of information upon which the charge is based; the approximate dates of the alleged unlawful employment practices; the nature of the charge (*e.g.*, failure to hire, failure to promote, dismissal); and if an individual charge has been filed, the position of the aggrieved individual (*e.g.*, applicant, employee, former employee). We recognize that one purpose of a Commissioner's charge is to initiate an investigation where an individual is unwilling to file the charge for fear of retaliation by the employer. *Graniteville Co. (Sibley Div.) v. EEOC*, *supra*, at 39 n.6; 110 CONG. REC. 14186–92 (1964), *reprinted in* EEOC, Legislative History of Titles VII and XI of the Civil Rights Act of 1964, 3301-12 (1978); *EEOC v. Dean Witter Co.*, *supra*, 643 F.2d at 1339. We do not require

the Commission to divulge information in the charge based on an employee complaint which might tend to reveal the identity of an individual who wishes to remain anonymous. But to the extent possible, the Commission should include in the charge the factual basis for the Commissioner's belief that a Title VII violation has occurred.[6]

Additional Issues

Shell further argues on appeal that: (1) enforcement of the EEOC's subpoena would effect an illegal search and seizure because the subpoena is unduly burdensome; (2) the EEOC's investigation is in violation of the Federal Reports Act because the Commission failed to use a properly authorized questionnaire form; and (3) the EEOC lacks authority to obtain information concerning Shell's computer capabilities and information which must be compiled by computer. We find that the district court adequately disposed of these issues in its memoranda and we do not disturb that court's ruling.

[6] We do not doubt that the Chair of the Commission may have some basis for her statement that she believes the employer has violated sections 703 and 707 of the Civil Rights Act of 1964. However, we believe the law requires additional factual material to comply with section 706(b) and 29 C.F.R. § 1602.14(a) (1981).

Conclusion

We hold that the Commissioner's charge was deficient for failure to include a factual basis for the Commissioner's belief that Shell engaged in unlawful employment practices. We remand to the district court for proceedings consistent with our holding including amendment of the Commissioner's charge to comply with the requirements set out in this opinion.

A true copy.
Attest:
CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

APPENDIX B

SHELL OIL COMPANY, PLAINTIFF,

v.

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ET AL., DEFENDANTS

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, PLAINTIFF,

v.

SHELL OIL COMPANY, ET AL., DEFENDANTS.

Nos. 80-1202-C(5), 81-0230-C(5).

United States District Court,
E. D. Missouri, E. D.

June 30, 1981

On Motion For Reconsideration and
Clarification Sept. 22, 1981.

Donna L. Harper, St. Louis, Mo., Dianna B. Johnston, Washington, D.C., for E.E.O.C.

Thomas R. Jayne, W. Stanley Walch, Charles A. Newman, Thompson & Mitchell, St. Louis, Mo., Martin D. Schneiderman, Samuel T. Perkins, Mark B. Goodwin, Steptoe & Johnson, Washington, D.C.,. for defendants in No. 80-1202-C(5) and plaintiff in No. 81-0230-C(5).

Susan J. Sandler, Houston, Tex., for Shell Oil Co.

MEMORANDUM

CAHILL, District Judge.

This matter is before the Court on various pretrial motions.

On September 27, 1979, Eleanor Holmes Norton, Chair of the Equal Employment Opportunity Commission (hereinafter EEOC), initiated a Commissioner's charge against Shell Oil Company (hereinafter Shell) under sections 706 and 707 of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* The charge alleged employment discrimination on the basis of race and sex at plaintiff's refinery in Wood River, Illinois. Subsequently, W. Ed. Mansfield, District Director of the St. Louis District Office of the EEOC, issued the EEOC's first request for information. An administrative subpoena duces tecum was served on Shell May 16, 1980 by Mansfield. In response thereto, on May 23, 1980, Shell filed a petition to revoke or modify the subpoena, which was denied by Mansfield on June 9, 1980. Shell filed an appeal of the petition to revoke or modify the subpoena on June 23, 1980. Likewise, Shell's appeal was denied by Leroy Clark, General Counsel of the EEOC, around August 27, 1980. Having exhausted its administrative remedies, Shell filed an action in this Court (No. 80-1202-C(5)) in order to quash the subpoena and to enjoin the EEOC, Norton, Clark, and Mansfield from their alleged unlawful and arbitrary course of conduct. Around February 4, 1981, the EEOC filed an action in the Southern District of Illinois (now No. 81-230-C(5)) against Shell and its agent, Roger Rice, to enforce the subpoena duces tecum issued by the EEOC. The actions have been consolidated and are now before this Court.

EEOC's Motion to Strike.

The EEOC moves to strike the first, third, and fourth defenses of Shell under Fed. R. Civ. P. 12(f). That rule provides in relevant part that the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. Those defenses are:

1. FIRST DEFENSE: The subpoena may not be enforced because EEOC lacks authority to issue a subpoena to investigate a charge that is unlawfully filed;

2. THIRD DEFENSE: The subpoena may not be enforced because EEOC lacks authority to issue a subpoena that contravenes the terms of the Federal Reports Act, 44 U.S.C. § 3501 *et seq.*;

3. FOURTH DEFENSE: The subpoena may not be enforced because the Commission claims the authority to disclose to unnamed third parties information produced pursuant to the subpoena in contravention of Section 706b and 709e of Title VII, as amended, 42 U.S.C. 2000e-5(b) and e-8(e) and the Trade Secrets Act, 18 U.S.C. Section 1905.

EEOC claims that Shell's first defense is vague and contains insufficient facts from which an opinion can be formed as to its validity and, therefore, should be stricken. The case law indicates that a motion to strike a portion of the pleadings is a drastic remedy which is viewed with disfavor and such motions are infrequently granted. *Lunsford v. United States*, 418 F. Supp. 1045, 1051 (D.S.D. 1979); *Zamora v. Massey-Ferguson, Inc.*, 336 F. Supp. 588, 591 (S.D. Iowa 1972); *Patrick v. I. D. Packing Company*, 308 F. Supp. 821, 823 (S.D. Iowa 1969); *Vernon J. Rockler and Co., Inc. v. Minneapolis Shareholders Company*, 69 F.R.D. 1, 5 (D. Minn. 1975). The Court should defer action on a motion to strike a pleading and leave the sufficiency of the allegations for a determination on the merits where there is no showing of prejudicial harm to the moving party. *Zamora*, 336 F. Supp. at 591; *Patrick*, 308 F. Supp. at 823. Here, EEOC has not shown that it will be prejudiced if its motion to strike is denied. Furthermore, a defense is good unless it appears to a certainty that plaintiffs would succeed despite any state of facts which would be provided in support of the defense, and any doubt as to the striking of matters in a pleading should

be resolved in favor of the pleading. *Vernon J. Rockler and Co., Inc.*, 69 F.R.D. at 5; *Hunter v. International Systems & Control Corp.*, 56 F.R.D. 617, 633 (W.D. Mo. 1972). This Court cannot say with certainty that the EEOC would succeed despite any state of facts which would be provided in support of Shell's defense. Therefore, the Court in its discretion denies EEOC's motion to strike as to Shell's first defense. *See Vernon J. Rockler and Co., Inc.*, 69 F.R.D. at 5.

EEOC asserts that Shell's third defense should be stricken because the Federal Reports Act is inapplicable to subpoenas. EEOC then cites the Court to *Adams v. F. T. C.*, 296 F.2d 861, 866 (8th Cir. 1961), *cert. denied*, 369 U.S. 864, 82 S.Ct. 1029, 8 L.Ed. 2d 83 (1962), which held that a subpoena meets the requirements for enforcement if the inquiry is: (1) within the authority of the agency; (2) the demand is not too indefinite, and (3) the information sought is reasonably relevant. *See Blue Ribbon Quality Meats, Inc. v. F.T.C.*, 434 F. Supp. 159, 162 (W.D. Mo. 1976); *United States v. Empire Gas Corp.*, 419 F. Supp. 34, 37 (W.D. Mo. 1976). Although the Court does not attempt to rule on the merits, it cannot say at this time that the subpoena is not within the authority of the agency, that the demand is insufficient, or that the information sought is irrelevant. Therefore, the Court in its broad discretion denies EEOC's motion to strike as to Shell's third defense. *See Vernon J. Rockler and Co., Inc.*, 69 F.R.D. at 5.

The court having considered EEOC's argument to strike Shell's fourth defense, denies the motion to strike as to Shell's fourth defense on the same grounds that it denied the motion as to Shell's first and third defenses. Accordingly, EEOC's motion to strike is denied.

EEOC's Motion For Protective Order That Discovery Not Be Had.

EEOC moves for a protective order under Fed. R. Civ. P. 26(c) forbidding the discovery via interrogatories and the first request for production of documents sought by Shell. First, EEOC challenges Shell's third defense in its answer. This same challenge was enunciated in EEOC's motion to strike. This argument for the motion for protective order is rejected, therefore, for the reasons set out by the Court in the denial of the motion to strike.

In regard to Shell's interrogatories No. 11-13, the motion for protective order is stayed pending the filing of a certificate of privilege by the EEOC with respect to these interrogatories. (See, memorandum in support of applicant's motion for protective order, p., 4.)

After careful review of the motion and the memorandum in support of the protective order, the Court finds that EEOC's motion for protective order is denied as to Shell's interrogatories No. 1-10 and 14-17 and Shell's first request to inspect and copy documents.

Shell's Motion For Continuance.

Shell moves to continue the hearing of the Court's order to show cause scheduled for April 17, 1981 until May 21, 1981, or until 45 days after EEOC has provided full answers to Shell's first interrogatories. Since the hearing on the order to show cause was held on May 15, 1981 in this Court, the motion for continuance is denied as moot.

EEOC's Motion For Reconsideration.

EEOC moves the Court to reconsider its order of March 6, 1981 denying defendant's motion to dismiss civil action No. 80-1202C(5). The grounds for the motion for reconsideration are:

1. Denial of the motion to dismiss and allowance of discovery by plaintiff will affirmatively harm the ability of the EEOC to carry out its mandate under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*
2. This is simply a motion to quash a subpoena and as such is a summary proceeding.
3. The recent amendment to the Federal Reports Act clarifies Congressional intent not to include investigatory material within the Act's coverage.

In order to systematically approach the present motion for reconsideration, the Court will analyze the original motion to dismiss on an issue by issue basis.

EEOC's first argument is that the Court lacks subject matter jurisdiction. This action is brought under U.S. Const. amend. V; the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*; the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*, 701 *et seq.*; the Federal Reports Act, 44 U.S.C. §§ 1331, 1337, 1391(e), and 1651. 28 U.S.C. § 1331 provides that the district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States. Since the instant matter arises under an amendment of the United States Constitution and several United States laws, this Court has subject matter jurisdiction under 28 U.S.C. § 1331.

Defendant next argues that plaintiff has failed to state a claim upon which relief can be granted under Fed.R. Civ. P. 12(b)(6). This contention is argued via four subsections entitled: A. Federal Reports Act, B. Confidentiality, C. There is Sufficient Justification For Issuance of a Commissioner Charge, and D. The Subpoena Should Not Be Quashed.

A. Federal Reports Act.

Shell asserts in Counts IV and V of the complaint that the information sought by the EEOC from Shell in its subpoena and October 1979 Request for Information

was requested in violation of the Federal Reports Act, 44 U.S.C. § 3501, *et seq.* It has come to the Court's attention that the Federal Reports Act has been replaced by the Paperwork Reduction Act of 1980, Pub. L. 96-511, 94 Stat. 2812, which became effective April 1, 1981. This Act indicates that it does not apply to the collection of information during the conduct of an administrative investigation of specific entities and that it is not intended to interfere with civil rights enforcement. Here, the EEOC was seeking information while conducting an administrative investigation of Shell, a specific entity. Therefore, EEOC's motion to dismiss is granted as to the claim under the Federal Reports Act, now the Paperwork Reduction Act of 1980. Accordingly, EEOC's motion to reconsider is granted as to the Federal Reports Act claim.

B. Confidentiality.

In Count VI Shell alleges that EEOC frequently retains outside consultants to review investigatory materials, particularly computer data, and in so doing, EEOC provides these consultants with a charged employer's company documents and computer records. Furthermore, Shell claims that this practice violates 42 U.S.C. §§ 2000e-5(b) and 2000e-8(c) and the Trade Secrets Act, 18 U.S.C. § 1905. Lastly, Shell states that the EEOC has refused to give it any assurance that it will not provide the information demanded to outside consultants, and EEOC has asserted a right to do so. To the contrary, the EEOC at the show cause hearing on May 15, 1981, intimated that the subpoena could be enforced with a stipulation that the information not be turned over to outside consultants. Transcript of Hearing, p. 26, lines 9-12. Since EEOC has indicated a willingness not to turn over the information requested to outside consultants, EEOC's motion to dismiss is granted as to this issue.

C. There Is Sufficient Justification For Issuance of a Commissioner's Charge.

Plaintiff alleges via complaint that the Commissioner's charge issued against it does not specify sufficient facts, that it exceeds the Commission's statutory authority, and that plaintiff's due process rights are violated in that it cannot defend itself against the allegations in the charge.

The Commissioner's charge reads:

COMMISSIONER'S CHARGE

Pursuant to the provisions of Sections 706 and 707 of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq. (Supp. v. 1975) I charge the following employer with unlawful employment practices:

Shell Oil Company
Wood River Refinery
P.O. Box 262
Wood River, Illinois 62095

I believe that the above employer is within the jurisdiction of the Equal Employment Opportunity Commission and has violated and continues to violate Sections 703 and 707 of the Civil Rights Act of 1964, as amended, by discriminating against Blacks and females on the basis of race and sex with respect to recruitment, hiring, selection, job assignment, training, testing, promotion, and terms and conditions of employment.

More specifically, the employer's unlawful discriminatory practices include, but are not limited to:

1. Failing or refusing to recruit, hire, promote, train, assign or select Blacks for managerial, professional, technical, office/clerical, craft, and service workers positions because of their race.
2. Failing or refusing to recruit, hire, promote, train, select, and assign females to managerial, profession-

al, technical, craft, operative, laborer and service worker positions because of their sex.

The persons aggrieved include all Blacks and women who are, have been or might be affected by the unlawful employment practices complained of herein.

Title 42 U.S.C. § 2000e-5(b) in relevant part provides:

> (b) Whenever a *charge* is filed by or on behalf of a person claiming to be aggrieved, or by a *member of the Commission*, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the *Commission shall serve a notice of the charge* (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. *Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires.* Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment

> practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge. (Emphasis supplied.)

The language of the statute clearly indicates that the Commissioner had the authority to issue a charge. Therefore, plaintiff's argument that the Commissioner's charge exceeds the Commission's statutory authority is without merit.

Plaintiff's allegation that the Commissioner's charge does not specify sufficient facts is also meritless. The purpose of a charge under section 706, 42 U.S.C. § 2000e-5, is only to initiate the EEOC investigation, not to state sufficient facts to make out a prima facie case. *Graniteville Co. (Sibley Div.) v. Equal Employ. Op. Com'n.*, 438 F.2d 32, 38 (4th Cir. 1971). A showing of resonable cause via facts, in order to find a Title VII violation need not be established before an administrative subpoena may be validly issued. *See Equal Employment Opportunity Commission v. Chrysler Corporation*, 567 F.2d 754, 755 (8th Cir. 1977). Rather, it is the function of such investigative subpoenas to establish whether reasonable cause to bring a discrimination charge exists. *Chrysler Corporation*, 567 F.2d at 755; *Graniteville Co.*, 438 F.2d at 36. 29 C.F.R.

§ 1601.12(b)(1980), which applies to charges filed by aggrieved persons and the Commission, states that a charge is sufficient when the Commission receives from the person making the charge a written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of. According to this standard, the Commissioner's charge is sufficient, because it is a typewritten statement which identifies the parties involved as being Shell Oil Company and the EEOC, and it describes generally the practices complained of as failing or refusing to recruit, hire, promote, train, assign or select Blacks and/or females for managerial, professional, technical, craft, and service worker positions, *inter alia*, because of their race and/or sex. *See* Commission's Charge, paragraphs 1 and 2.

As per 42 U.S.C. § 2000e-5(b), only *notice* of the charge must include the date, place and circumstances of the alleged unlawful employment practice. The rule only requires that charges be in writing under oath or affirmation and contain such information and be in such form as the Commission requires. Here, the charge was type-written, sworn to by Commissioner Norton, and substantially complied with Commission guidelines.

Similarly, it is difficult to fathom plaintiff's argument that its U.S. Const amend. V due process rights are violated in that it cannot defend itself against the allegations in the charge. In nonadjudicative, fact-finding investigations, traditional notions of U.S. Const. amend. V due process do not attach. *See Hannah v. Larche*, 363 U.S. 420, 446, 80 S.Ct. 1502, 1516, 4 L.Ed. 2d 1307 (1959); *Ewing v. Mytinger & Casselberry*, 339 U.S. 594, 598, 70 S.Ct. 870, 872, 94 L.Ed. 1088 (1949). In the present case, EEOC is seeking to make a nonadjudicative investigation, therefore, due process under U.S. Const. amend. V is inapplicable.

Based on the foregoing, there is sufficient justification for issuance of the Commissioner's charge and EEOC's motion to dismiss is granted as to this issue.

D. The Subpoena Shouuld Not Be Quashed.

Plaintiff alleges that the suboena should be quashed, because the information sought is irrelevant.

It is clear that the EEOC has the authority to make investigations in order to determine if individual and/or pattern or practice discrimination is ongoing. *See* 42 U.S.C. §§ 2000e-5(b) and 2000e-6(e). 42 U.S.C. § 2000e-8(a) states that the Commission or its designated representative shall have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices and is *relevant* to the charge under investigation. Notions of relevancy at the investigatory stage are very broad, and so long as the EEOC is not wandering into wholly unrelated areas, the EEOC has the power to investigate and thus to subpoena documents concerning any employer practice which may shed light on the discrimination charged. *Equal Employment Opportunity v. Cambridge Title Mfg.*, 590 F.2d 205, 206 (6th Cir. 1979). The Court after reviewing the subpoena finds that the information requested therein is not wholly unrelated to the charge under investigation. Therefore, the information requested is relevant and the subpoena should not be quashed.

Additionally, plaintiff complains that it would be unduly burdensome to produce the information requested, to provide compilations and to provide computer information. The fact of being burdensome alone is not a sufficient basis for refusal to enforce a subpoena. 42 U.S.C. § 2000e-8(a) places no limitations on the Commission's access to materials on the basis of the burden to the company. *EEOC v. United States Fid. & Guar.*

Co., 414 F. Supp. 227, 244 (D. Md. 1976), *aff'd*, 538 F.2d 324 (4th Cir. 1976). Therefore, plaintiff's argument appears to have minimal merit.

After careful reconsideration of the EEOC's motion to dismiss, the Court finds that the motion to dismiss cause No. 80-1202-C(5) has merit. Therefore, the Court vocates its order denying EEOC's motion to dismiss dated March 6, 1981, and in lieu thereof grants EEOC's motion for reconsideration.

Shell Motion To Enforce Stipulation.

Shell moves to enforce a stipulation entered between Shell and the EEOC which was filed on January 12, 1981. The relevant portion of the stipulation provides that in the event the defendants' (EEOC, et al.) motion to dismiss is denied, defendants agree to answer or object within 30 days of such denial, plaintiff's first interrogatories filed on November 24, 1980. After the motion to dismiss was originally denied by the Court, defendants failed to answer or object to plaintiff's interrogatories. Instead, defendants filed a motion to reconsider their motion to dismiss. The Court has now granted the motion to reconsider. Since defendant's original motion to dismiss has in effect been granted via motion for reconsideration, defendants are not required to answer or object to plaintiff's first interrogatories within 30 days of this Court's order, as per the stipulation. Accordingly, Shell's motion to enforce the stipulation is denied.

Defendants' (EEOC, et al.) Motion for Protective Order.

Defendants (EEOC, et al.) in cause No. 80-1202-C(5) moved for a protective order staying all discovery in that case pending a ruling on defendants' motion for reconsideration. In that the motion for reconsideration has been ruled on by the Court, defendants' motion is denied as moot.

IT IS SO ORDERED.

JUDGMENT

IT IS ORDERED, ADJUDGED, AND DECREED that judgment is entered for the EEOC in civil action No. 80-1202-C(5), Shell's action to quash the subpoena.

IT IS ORDERED, ADJUDGED, AND DECREED that judgment is entered for the EEOC in civil action No. 81-0230-C(5), EEOC's action to enforce the subpoena.

MEMORANDUM

On Motion For Reconsideration and Clarification

This matter is before the Court upon the Equal Employment Opportunity Commission's (hereafter EEOC) motion for reconsideration and clarification and Shell Oil Company's (hereinafter Shell) cross-motion for clarification.

On September 27, 1979, Eleanor Holmes Norton, Chair of the EEOC, initiated a Commissioner's charge against Shell under Sections 706 and 707 of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* The charge alleged employment discrimination on the basis of race and sex at plaintiff's refinery in Wood River, Illinois. Subsequently, W. Ed. Mansfield, District Director of the St. Louis District Office of the EEOC, issued the EEOC's first request for information. An administrative subpoena duces tecum was served on Shell May 16, 1980 by Mansfield. In response thereto, on May 23, 1980, Shell filed a petition to revoke or modify the subopena, which was denied by Mansfield on June 9, 1980. Shell filed an appeal of the petition to revoke or modify the subpoena on June 23, 1980. Likewise, Shell's appeal was denied by Leroy Clark, General Counsel of the EEOC, around August 27, 1980. Having exhausted its administrative remedies, Shell filed an action in this Court [No.

80-1202-C(5)] in order to quash the subpoena and to enjoin the EEOC, Norton, Clark, and Mansfield from their alleged unlawful and arbitrary course of conduct. Around February 4, 1981, the EEOC filed an action in the Southern District of Illinois [now No. 81-0230-C(5)] against Shell and its agent, Roger Rice, to enforce the subpoena duces tecum issued by the EEOC. The actions were consolidated and brought before this Court. Thereafter the EEOC moved to dismiss civil action No. 80-1202-C(5). The Court denied EEOC's motion to dismiss via its order of March 6, 1981. EEOC then filed other pretrial motions and a motion for reconsideration of the Court's order of March 6, 1981. The Court in its order dated June 30, 1981, granted, *inter alia*, EEOC's motion for reconsideration.

EEOC now moves for reconsideration of those portions of the June 30, 1981 order denying its motions for a protective order and to strike defenses. Both parties move for clarification of the Court's order of June 30, 1981.

In reconsideration and clarification of the Court's order of June 30, 1981, for the reasons outlined in the Court's memorandum (pp. 5-11) of June 30, 1981, civil action No. 80-1202-C(5), Shell's action to quash the subpoena is dismissed. Therefore, judgment in civil action No. 80-1202-C(5) is entered for the EEOC. After careful consideration of Shell's arguments, defenses, and memoranda explaining why the subpoena should not be enforced which were presented at the show cause hearing and in the pleadings, the Court enters judgment for EEOC in civil action No. 81-0230-C(5), EEOC's action to enforce the subpoena.

In addition to the rationale set out on pages 5-11 of the Court's order of June 30, 1981, the Court finds that the subpoenaed information is material and relevant to the EEOC's investigation. *See Equal Employment Opportunity Commission v. Chrysler Corporation*, 567

F.2d 754, 755 (8th Cir. 1977); *Equal Emp. Op. Com'n v. University of N.M., Albuquerque*, 504 F.2d 1296, 1301 (10th Cir. 1974). Although compliance with the subpoena may place somewhat of a burden on Shell, burdensomeness alone is not a sufficient basis for refusal to enforce a subpoena. *EEOC v. Unites States Fid. & Guar. Co.*, 414 F.Supp. 227, 244 (D.Md.1976). Any inconvenience or difficulty must be considered as a part of the social burden of living under government. *Id.* at 244. In order to alleviate some of the burden and expense of compliance, the EEOC previously assured Shell that it (EEOC) is authorized to contribute toward the costs of compliance. (*See* Determination On Appeal Petition, paragraph 3.)

Additionally, the subpoena is not subject to quashing because it requires Shell to make certain compilations. *See New Orleans Public Service, Inc. v. Brown*, 507 F.2d 160, 164 (5th Cir. 1975); *Okla. Pub. Co. v. Powell*, 22 FEP Cases 1421, 1425 (W.D.Okla.1976), *aff'd, Okla. Pub. Co. v. EEOC*, 22 FEP Cases 1429 (10th Cir. 1978), *cert. denied*, 439 U.S. 863, 99 S.Ct. 186, 58 L.Ed.2d 173 (1978).

The EEOC, however, cannot require Shell to furnish *copies* of documents. *See Okla. Pub. Co.*, 22 FEP Cases at 1425-26. 42 U.S.C. § 2000e-8(a) provides:

> (a) In connection with any investigation of a charge filed under section *2000e-5* of this title, the Commission or its designated representative shall at all reasonable times have *access to*, for the purpose of examination, and the *right to copy* any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this subchapter and is relevant to the charge under investigation. (Emphasis supplied.)

Accordingly, the subpoena, to the extent that it seeks copies to be supplied by Shell, is modified and is en-

forceable only to the extent access to and the right to copy evidence is sought.

Therefore, Shell shall comply with the subpoena as modified in connection with the investigation of the charge filed by Eleanor Holmes Norton by allowing EEOC representatives access to the subpoenaed documents and information commencing no later than October 23, 1981, and continuing until production is completed. The information obtained by the EEOC, however, shall not be turned over to any outside consultants. In that this ruling disposes of this consolidated action because it disposes of both civil action No. 80-1202-C(5) and No. 81-0230-C(5), the Court finds there is no longer a need for Shell's discovery. Therefore, EEOC's motions for protective order that discovery not be had and to strike defenses are denied.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
SEPTEMBER TERM, 1981

Filed April 23, 1982

No. 81-1811

SHELL OIL COMPANY, APPELLANT,

v.

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ET AL APPELLEES.

* * *

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, APPELLEE,

v.

SHELL OIL COMPANY, APPELLANT.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI.

JUDGMENT

This appeal from the United States District Court for the Eastern District of Missouri was considered on a designated record from the United States District Court and on the briefs of the respective parties and was argued by counsel.

After consideration, it is ordered and adjudged that this cause be and is hereby, remanded to the said

District Court for proceedings consistent with the opinion of this Court.

APRIL 28, 1982

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 81-1811

SHELL OIL COMPANY, APPELLANT,

v.

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; ELEANOR HOLMES NORTON, UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; LEROY CLARK, GENERAL COUNSEL, UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; W. ED MANSFIELD, DISTRICT DIRECTOR, ST. LOUIS DISTRICT OFFICE, UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, APPELLEES.

ORDER DENYING PETITION FOR REHEARING EN BANC

FILED: July 20, 1982

The petition for rehearing en banc in the above entitled case is denied.

Lay, Chief Judge, would grant the petition for rehearing en banc.

I must respectfully dissent from denial of the petition for rehearing en banc because I believe that the panel's opinion is inconsistent with this court's holding in *EEOC v. Chrysler Corp.*, 567 F.2d 754 (8th Cir. 1977),

and in direct conflict with the decisions of all other courts of appeals addressing the issue of factual allegations in a title VII charge. Because the panel's decision goes far beyond any other court of appeals in requiring detailed pleadings to support an administrative subpoena, and because of the profound impact that such a holding will necessarily have on the EEOC's pattern and practice enforcement program, I believe that a review of the case en banc is warranted.

The panel's decision holds that a charge filed by the chair of the Equal Employment Opportunity Commission against Shell Oil Co. pursuant to sections 706 and 707 of title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e–5 and 2000e–6, fails to set forth sufficient facts regarding the dates and circumstances of the alleged unlawful employment practices as required by section 706(b) of title VII, 42 U.S.C. § 2000e–5(b). *See Shell Oil Co. v. United States EEOC*, No. 81-1811, slip op. at 9 (8th Cir. April 28, 1982, amended July 20, 1982). Thus, the panel concludes, the charge is insufficient to support the EEOC's subpoena requiring Shell to produce certain evidence described in the Request for Information covering the period from 1976 to the present. *Id.* at 2-3. The cause was subsequently remanded to the district court to allow the EEOC an opportunity to amend the charge to comply with section 706(b). *Id.* at 9.

The disputed charge is as follows:

> Pursuant to the provisions of Sections 706 and 707 of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq, (supp v. 1975) I charge the following employer with unlawful employment practices:
>
> Shell Oil Company
> Wood River Refinery
> P.O. Box 262
> Wood River, Illinois 62095

> I believe that the above employer is within the jurisdiction of the Equal Employment Opportunity Commission and has violated and continues to violate Sections 703 and 707 of the Civil Rights Act of 1964, as amended, by discriminating against Blacks and females on the basis of race and sex with respect to recruitment, hiring, selection, job assignment, training, testing, promotion, and terms and conditions of employment.
>
> More specifically, the employer's unlawful discriminatory practices include, but are not limited to:
>
> 1. Failing or refusing to recruit, hire, promote, train, assign or select Blacks for managerial, professional, technical, office/clerical, craft, and service workers positions because of their race.
>
> 2. Failing or refusing to recruit, hire, promote, train, select, and assign females to managerial, professional, technical, craft, operative, laborer and service worker positions because of their sex.
>
> The persons aggrieved include all Blacks and women who are, have been or might be affected by the unlawful employment practices complained of herein.

The panel found fatal to this charge the fact that the EEOC used July 2, 1965, the effective date of the title VII, as the beginning date of Shell's title VII violation. Use of such a date, the panel concludes, fails to notify Shell of the parameters of the investigation because the charge contains no factual basis in the allegations supporting that date. *Id.* at 7-8. The panel additionally faulted the charge, stating:

> Adequate notice of the factual basis for the charge enables the parties to determine whether conciliation is an appropriate remedy and aids the court and the employer in determining what evidence is relevant for discovery and what records must be retained in accordance with EEOC regulations. 29 C.F.R. § 1602.14(a) (1981). A charge which simply alleges discrimination in all areas of employment

practice without some factual or statistical basis gives the appearance of a "fishing expedition" and fails to give the employer sufficient notice. *Graniteville Co. (Sibley Div.) v. EEOC*, 438 F.2d 32, 41 (4th Cir. 1971).

Id. at 8.

In *EEOC v. Chrysler Corp.*, 567 F.2d 754 (8th Cir. 1977), this court upheld the district court's order enforcing the EEOC's subpoena duces tecum stating:

> Reasonable cause for finding a Title VII violation need not be established before an administrative subpoena may be validly issued. Rather, it is the function of such investigative subpoenas to establish whether reasonable cause to bring a discrimination charge exists. *See EEOC v. Quick Shop Markets, Inc.*, 526 F.2d 802, 803 (8th Cir. 1975); *Graniteville Co. (Sibley Div.) v. EEOC*, 438 F.2d 32, 36 (4th Cir. 1971). Thus, a court faced with a demand for enforcement is limited to determining whether the subpoenaed information is material and relevant to the investigation of a potential violation. To do otherwise would be to "not only place the cart before the horse, but to substitute a different driver for the one appointed by Congress." *Graniteville Co. (Sibley Div.) v. EEOC*, *supra* at 36. *See also EEOC v. South Carolina National Bank*, 562 F.2d 329, at 331-332 (4th Cir., filed Sept. 28, 1977); K. Davis, Administrative Law Text 63-66 (3d ed. 1972).
>
> The district court properly exercised its limited review of the relevance and materiality of the subpoena in ordering its enforcement. *See EEOC v. Quick Shop Markets, Inc.*, *supra* at 803. Those issues relating to the existence of reasonable cause for finding a violation of Title VII must await the completion of the administrative process before the district court may properly review them. *Cf. Reynolds Metals Co. v. Rumsfeld*, 564 F.2d 663, at 668 (4th Cir., filed Oct. 14, 1977). By allowing the administrative process to be completed the issues

> may well be disposed of without the necessity of federal court action. The defendant's contentions are premature.

567 F.2d at 755.

Accord EEOC v. Bay Shipbuilding Corp., 668 F.2d 304, 312–13 (7th Cir. 1981); *EEOC v. Dean Witter Co.*, 643 F.2d 1334, 1338 and n.3 (9th Cir. 1980). Other courts have also read section 706 to require no detailed factual pleading, and have permitted charges similar to those in the instant case. *See, e.g., New Orleans Public Service, Inc. v. Brown*, 507 F.2d 160, 162-64 (5th Cir. 1975) (statistics alleged in charge of discriminatory pattern and practice; the court in dicta inferred that charge would have been sufficient even without statistical allegations); *Sparton Southwest, Inc.* v. *EEOC*, 461 F.2d 1055, 1058-60 (10th Cir. 1972) (en banc) (subpoena based on similar charge upheld); *General Employment Enterprises, Inc. v. EEOC*, 440 F.2d 783, 783-84 (7th Cir. 1971); *Bowaters Southern Paper Corp. v. EEOC*, 428 F.2d 799, 800-01 (6th Cir.), *cert. denied*, 400 U.S. 942 (1970).

It would appear that the panel decision would require the Commission to show extrinsic evidence of reasonable cause in order to conduct an investigation to determine reasonable cause. Furthermore, the court's decision would impose the pleading standards of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 8, upon an administrative fact-finding investigation. Such a position is supported by neither logic nor precedent, and would severely undermine the Commission's ability to bring commissioner's charges of discriminatory patterns and practices as authorized under 42 U.S.C. § 2000e-5[.] For these reasons, a rehearing of this action by this court en banc is in order.

A true copy.

Attest:

CLERK, *U.S. Court of Appeals, Eighth Circuit.*

APPENDIX E

EEOC Compliance Manual (CCH 1982)

SECTION 16
PROCESSING SYSTEMIC CASES

16.2 *Standards for Selecting Systemic Respondents*—The Commission has approved the following standards for the selection of subjects for systemic inquiry. It shall be sufficient for the Commission to institute a systemic proceeding that a respondent meet one of the standards for selection. These standards are for internal guidance in the exercise of administrative discretion and do not create rights on the part of any person who may become a subject of a systemic proceeding, or any obligation on the part of the Commission to proceed against any particular person. These standards do not foreclose the Commission from instituting systemic proceedings against any other employer or other persons subject to Title VII whose acts or practices are such that a systemic proceeding will effect the purpose of Title VII.

(a) Employers or other persons subject to Title VII who continue in effect policies and practices which result in low utilization of available minorities and/or women despite the clear obligation in Title VII to fairly recruit, hire and promote such persons.

(b) Employers or other persons subject to Title VII who employ a substantially smaller proportion of minorities and/or women than other employers in the same labor market who employ persons with the same general level of skills.

(c) Employers or other persons subject to Title VII who employ a substantially smaller proportion of minorities and/or women in their higher paid job categories than in their lower paid job categories.

(d) Employers or other persons subject to Title VII who maintain specific recruitment, hiring, job assignment, promotion, discharge, and other policies and practices relating to the terms and conditions of employment that have an adverse impact on minorities and/or women, and are not justified by business necessity. Such policies and practices may include, but are not limited to, those prohibited in Commission Guidelines on Sex Discrimination, 29 C.F.R. 1604, Religious Discrimination, 29 C.F.R. 1605, and National Origin Discrimination, 29 C.F.R. 1606; the Guidelines on Employee Selection Procedures, 29 C.F.R. 1607; and other guidelines as they may be adopted and amended from time to time.

(e) Employers or others subject to Title VII whose employment practices have had the effect of restricting or excluding available minorities and/or women from significant employment opportunities, and who are likely to be used as models for other employers because of such factors as the number of their employees, their impact on the local economy, or their competitive position in the industry.

(f) Employers (a) who because of expanding employment or significant turnover rates, even if the employer's enforcement is stable or in retrenchment, are likely to have substantial numbers of employment opportunities, and (b) whose practices may not provide available minorities and women with fair access to these opportunities.

16.3 *Procedure for Selecting Systemic Respondents*

(a) *Preliminary Screening by Headquarters*—Headquarters OSP will develop a list of potential systemic respondents for each of the Commission's Systemic Units. This will be done by applying the Commission's systemic selection standards to an analysis of

EEO reporting data and other available information. Systemic inquiries recommended by Commissioners or requested by individuals and organizations will also be considered during this preliminary stage.

(b) *Requests for Systemic Inquiries From the Public*—Any person or organization may request the issuance of a Commissioner Charge pursuant to Section 1601.6 of the Procedural Regulations. When such a request relates to systemic discrimination, it will be forwarded for evaluation to OSP. The request will then be evaluated in terms of the standards established by the Commission for selecting systemic respondents.

(c) *Analysis by Systemic Units*—The Investigations Division, OSP, and District Office Systemic Units will conduct a careful analysis of the preliminary lists developed for them by Headquarters. This analysis will normally include review of information available both within the Office (e.g., charge files) and from outside sources (e.g., federal contract compliance agencies). The Systemic Units will make recommendations for selections to the Top Management Committee (TMC). See 12.2 for description of membership and responsibilities of the TMC.

The Systemic Units may also analyze other potential respondents not appearing on the preliminary list, including potential respondents named in requests by the public for systemic inquiries, which in their judgment warrant consideration. Systemic Units may recommend the selection of a respondent which does not appear on the OSP preliminary list to the TMC. Such recommendations must conform to the Commission's systemic selection policy as interpreted by the Director, OSP.

The TMC is encouraged to submit to OSP for preliminary analysis any non-listed respondents they are considering.

(d) *Transmittal of Recommendations to the Director, OSP*—Top Management Committees and the Di-

rector of Investigations, OSP, will transmit to the Director, OSP, their recommendations for the issuance of systemic Commissioner Charges. Each recommendation shall be accompanied by both a Commissioner Charge ready for signature, and a memorandum detailing information concerning respondent's practices, the reasons for selecting the respondent (including a showing that at least one of the systemic selection standards applies to the respondent), and a description and justification of the proposed scope of the case.

(e) *Review and Approval by Headquarters*—The Director, OSP, will review the Top Management Committees recommendation for field cases and the OSP Director of Investigations recommendations for headquarters cases, will coordinate with the Associate General Counsel, Trial Division, and will forward recommended Commissioner Charges with supporting data to the Commissioners on a rotating basis for signature.

(f) *Transmittal of the Charge for Processing*—When a systemic Commissioner Charge is signed by a Commissioner, the Director, OSP, will immediately transmit the charge to the appropriate Office for processing.

APPENDIX F

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

072800036

COMMISSIONER'S CHARGE

Pursuant to the provisions of Sections 706 and 707 of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq, (Supp v. 1975) I charge the following employer with unlawful employment practices:

Shell Oil Company
Wood River Refinery
P.O. Box 262
Wood River, Illinois 62095

I believe that the above employer is within the jurisdiction of the Equal Employment Opportunity Commission and has violated and continues to violate Sections 703 and 707 of the Civil Rights Act of 1964, as amended, by discriminating against Blacks and females on the basis of race and sex with respect to recruitment, hiring, selection, job assignment, training, testing, promotion, and terms and conditions of employment.

More specifically, the employer's unlawful discriminatory practices include, but are not limited to:

1. Failing or refusing to recruit, hire, promote, train, assign or select Blacks for managerial, professional, technical, office/clerical, craft, and service workers positions because of their race.
2. Failing or refusing to recruit, hire, promote, train, select, and assign females to managerial, professional, technical, craft, operative, laborer and service worker positions because of their sex.

The persons aggrieved include all Blacks and women who are, have been or might be affected by the unlawful employment practices complained of herein.

District of Columbia, ss:

I, ELEANOR HOLMES NORTON, being duly sworn, depose and say that I am a Commissioner of the Equal Employment Opportunity Commission and that I have cause to believe that Shell Oil Company has committed the unlawful employment practices set forth in the foregoing charge.

/s/ _____
ELEANOR H. NORTON

SUBSCRIBED AND SWORN TO BEFORE ME THIS 27th DAY OF SEPTEMBER 1979.

/s/ _____
CORA O. DIXON
Notary Public

My Commission expires September 14, 1981.

APPENDIX G

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

AMENDMENT TO COMMISSIONER CHARGE

On September 27, 1979, I signed a Commissioner charge against:

Shell Oil Company
Wood River Refinery
P.O. Box 262
Wood River, Illinois

When I signed the charge I intended to cover all the unlawful employment practices identified therein occurring from July 2, 1965, continuing through at least the date of the charge, and I believe that the charge as written did cover that time period. Nevertheless, to clarify any possible ambiguity that may exist in view of the decision in *EEOC* v. *Dean Witter Co.*, 621 F.2d 1012 (9th Cir. 1980), I hereby amend the original charge, which is incorporated here by reference, to state that I have reason to believe that the named employer had engaged in the identified unalwful employment practices on a continuing basis from at least July 2, 1965, until the present.

I swear or affirm that I have read the above amendment and that it is true to the best of my knowledge, information and belief.

/s/ _____
ELEANOR H. NORTON
Commissioner

Subscribed and sworn to before me this 16th day of January, 1981.

/s/ SUSIE T. FOFHE
Notary Public

My Commission expires 31 October 1984